

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to supporting the trial court’s judgment.” *In re Estate of Pouser*, 193 Ariz. 574, ¶ 2, 975 P.2d 704, 706 (1999). The trial court appointed Hunter personal representative of the estate on June 30, 2008, noting that Hunter had avowed that all heirs consented to him serving without a bond. It vacated that order on September 9, 2008, finding that some heirs had not consented. It required Hunter to post a bond to serve as personal representative, but he never did so. On May 20, 2010, Hunter filed a petition for fees and costs in the amount of \$13,827.76, which the court denied. This appeal followed.

Discussion

¶3 Hunter argues the trial court erred in denying his petition for fees and costs, asserting he had, in fact, acted in good faith for the benefit of the estate. We review for an abuse of discretion the court’s decision whether to award a fiduciary’s fees. *See In re Estate of Estes*, 134 Ariz. 70, 80, 654 P.2d 4, 14 (App. 1982). And we defer to the court’s findings of fact if “there is reasonable evidence in the record to sustain them.” *In re Estate of Stephens*, 117 Ariz. 579, 584, 574 P.2d 67, 72 (App. 1978). Further, “the appellant has the burden of demonstrating to this court that there was error committed below.” *Guard v. Maricopa County*, 14 Ariz. App. 187, 188-89, 481 P.2d 873, 874-75 (1971).

¶4 Hunter filed his petition pursuant to A.R.S. § 14-3720, entitled “Expenses in estate litigation,” not pursuant to A.R.S. § 14-3719, “Compensation of personal

representative.” Even assuming, without deciding, that all of the items included in his petition are “expenses” for the purposes of § 14-3720, we affirm the trial court’s ruling.

¶5 A personal representative may “receive from the estate his necessary expenses and disbursements” when he “defends or prosecutes any proceeding in good faith.” § 14-3720. Hunter contends that “[t]he evidence is undisputed that [he] acted in good faith and for the benefit of [the] estate and [its] heir[s] from April 12, 2005 to [the] present.” And he details in his statement of facts successful challenges he appears to have brought on behalf of the estate. But none of these challenges occurred while he was the appointed personal representative of the estate, the only period for which he could be entitled to any fees and costs.¹ *See* § 14-3720 (allowing for expenses to be paid to “any personal representative or person nominated as personal representative”). Moreover, while he repeatedly asserts in his briefs that he acted in good faith, he provides few examples of his actions during his tenure as personal representative, and he does not make any legal argument about how these actions would constitute good faith.

¶6 Furthermore, specific actions during his tenure aside, the trial court appears to have decided that Hunter did not act in good faith because he misrepresented to the court that all of the heirs consented to his serving without bond and because this misrepresentation resulted in “further expense to the estate.” In fact, only six of the

¹In the affidavit accompanying his petition below, Hunter included one line item for fees and costs prior to his actual appointment as personal representative. But he specifically states he is only requesting fees and costs for the time he was the personal representative of the estate, not during any time prior to when he may have been nominated for the role.

thirteen heirs, including Hunter, eventually consented. Therefore, the court concluded Hunter's entire appointment as personal representative was tainted by the misrepresentation, did not benefit the estate, and was not in good faith. *See In re Estate of Gordon*, 207 Ariz. 401, ¶¶ 25-26, 87 P.3d 89, 94 (App. 2004) (presence or absence of benefit to estate one factor of good faith). And Hunter does not meaningfully challenge this finding, providing no evidence to the contrary.² Consequently, Hunter has not sustained his burden of showing that the trial court abused its discretion.

Conclusion

¶7 In light of the foregoing, we affirm the trial court's denial of Hunter's petition.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

²Hunter's entire argument is limited to noting that the trial court, in a minute entry from a hearing one month after his appointment as personal representative, stated: "There is no objection [to] the appointment of Mr. Hunter as Personal Representative." But this statement is merely a record of a lack of objection at that hearing; it does not reflect whether he misrepresented the consent of the other heirs at the time of his appointment.